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COMMITTEE ON NATURAL RESOURCES  
January 21, 2005  
LB 94, 139, 298, 335

The Committee on Natural Resources met at 1:30 p.m. on Friday, January 21, 2005, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 94, LB 139, LB 298, LB 335, and also gubernatorial appointments. Senators present: Ed Schrock, Chairperson; Elaine Stuhr, Vice Chairperson; Carol Hudkins; Gail Kopplin; Bob Kremer; LeRoy Louden; and Vickie McDonald. Senators absent: Adrian Smith.

SENATOR SCHROCK: Good afternoon. For the record, my name is Ed Schrock. I chair the Legislature's Natural Resources Committee. I would like to introduce the other members of the committee. To my far right is Senator LeRoy Louden from Ellsworth, next to him is Gail Kopplin from Gretna, next to Senator Kopplin is Senator Carol Hudkins from Malcolm. And to my immediate right is Jody Gittins from Wahoo, but we don't usually say where she's from. To my immediate left is Elaine Stuhr, a senator from Bradshaw and she is vice chair of the committee, next to her is Senator Vickie McDonald from St. Paul, the lucky winner from last night so...and next to Senator McDonald is Senator Kremer from Aurora, and on the far left is Barb Koehlmoos, the committee clerk. A few instructions as we start, well, we'll introduce the page. Eric McCormick from Grant, Nebraska, he's a junior at UNL and...you're majoring in what, Eric?

ERIC MCCORMICK: Elementary Education.

BARB KOEHLMOOS: Elementary Education.

SENATOR SCHROCK: Elementary Education. Well, this should be good training for working with kids. (Laughter) A few instructions: if you have a cell phone, please turn it off. If you wish to testify on a bill, please fill out one of the green sheets that you see at the corners. Try and fill them out before you testify. If you have an impulse to testify and you haven't filled one out, if it's not a problem, do it afterwards, just don't forget. When you testify, start off by stating your name and spelling it for the record. If you have handout material, the page will help you with it. I will tell you if you have handout material, don't read it. If you have written testimony and you start reading it, I will stop you. We've, most of us have been around long

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enough, we've heard about everything. Underline what you think are the important parts and bring that out to our attention. I'm not going to limit people, but if you've talked five minutes and you can't tell us what you want us to know in five minutes, I will probably stop you. We're going to be a little leaner and meaner this year. That should about cover it. Like I said, if you have handout material, you can give it to the page or committee clerk. If you need a drink of water while you're testifying, the page can accommodate you. With that, we will start with the confirmation hearing for Ken Kunze; am I pronouncing that right, Ken, to the Power Review Board. Ken, if you would come forward and we would ask you to tell us a little bit about yourself and we have some information on you. Are you a new appointment or a reappointment?

KEN KUNZE: Reappointment.

SENATOR SCHROCK: Okay. So you're an old hat at this.

KEN KUNZE: Well, I don't know about that.

SENATOR SCHROCK: You may commence.

CONFIRMATION HEARING ON  
KEN KUNZE TO THE  
POWER REVIEW BOARD

KEN KUNZE: Okay. My name is Ken Kunze. It's K-e-n, last name K-u-n-z-e. I live and reside in York, Nebraska, and I've been on the public or the Power Review Board now for 4 years. I'm in the real estate business and I have a wife that teaches school at St. Joseph's Grade School and I have three children that are grown and married. Do you want me to make a statement, Senator, or do you want to just ask me questions?

SENATOR SCHROCK: Make a brief statement about you've served in the past...

KEN KUNZE: Okay.

SENATOR SCHROCK: ...and why...

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KEN KUNZE: Okay.

SENATOR SCHROCK: ...you think it's important to be on the board.

KEN KUNZE: Okay. I just wrote up a little thing that I wanted to share with you. I'm not passing it out, so I assume that I can refer to it. We are indeed fortunate to live in an all public power state and our electrical rates have stayed continually lower than many other states, usually around the fifth as far as ranking is concerned. While serving on the Power Review Board for the past 4 years, I have witnessed the continued cooperation among our electrical suppliers in the area of generation and transmission, and it is truly an electrical system that works for us. I would encourage this committee to give the public or the Power Review Board direction on the future development of alternative sources of energy. Renewable sources such as wind power have caught the public's attention. For the Power Review Board to approve these projects, we need legislative approval that would give us statutes to allow us to recognize the importance of these projects, even if they do not pass the litmus test of being economically feasible, as compared to electricity that's generated by gas, or coal, or nuclear energy. Deregulation has, for the time being, been faded into the past. The problems that occurred in California have proven, to me anyway, to be a result of nothing but greed, and it seems that it's the biggest deterrent to ever seeing deregulation of our electrical system that we have here in the state of Nebraska. So I just wanted to briefly go through those issues and then answer any questions you might have.

SENATOR SCHROCK: Thank you, Ken. Are there questions?  
Senator Stuhr.

SENATOR STUHR: Welcome, Ken.

KEN KUNZE: Thank you.

SENATOR STUHR: What have you seen as one of the greatest challenges of serving on the board as a member?

KEN KUNZE: I think the biggest challenge that we have is dealing with applications, large applications before us from

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people such as NPPD, which is the most recent one, in regards to wind generation because the statutes that we have now that we're framed by do not allow us to approve anything that is a duplication or that is not economically feasible. And when you compare it to the cost of coal and gas and nuclear energy, it's prohibitive at this point. And it's not a dependable thing because, obviously, the wind doesn't blow all the time. So we really have to stretch our limits and there's been a real problem in doing that. And that's why I think that we need some legislative guidance that would allow us to recognize it as something that's very valuable, that should be a part of our electrical process, and that it offers something as a combination with the others that I've mentioned that people want and are willing to pay for, because that's the bottom line. If they will not buy it, it will not sell, and it just isn't going to be something that, you know, that we can see generate without the interest of the public and their willingness to pay for it.

SENATOR STUHR: Okay. Thank you.

SENATOR SCHROCK: Other questions? Ken, I thought we either passed or considered legislation that would allow you to consider those things even though they are not the lowest cost.

KEN KUNZE: You...

SENATOR SCHROCK: And counsel left...

KEN KUNZE: You did indeed and what that referred to was the smaller things of 10,000 kilowatts or smaller. I'm just referring to something larger, like the 60 megawatts that NPPD was wanting to do out by Ainsworth. It doesn't cover those items, so I think that we're on the right track; we just need to go a little further and have something in position that would allow us to approve those projects as well as the smaller ones. Now, we received an opinion from the Attorney General's office that eliminates us having to approve a very small generation facility, such as you would find on a farm. If a person wanted to put up a wind generator or do something with methane, we do not have to approve that now because it's the Attorney General's opinion that that is under federal law and we really don't have the

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power to overrule the federal law.

SENATOR SCHROCK: Other questions for Ken? We need to clarify that a little bit. I think maybe we should consider that, although Wednesday was the last day to introduce bills, so...

KEN KUNZE: No, I know, and the industry, I might tell you this, that since we're just a regulatory agency, we're really can't come to you or maybe even to the industry and say, well, this is what we'd like. We're subject to these things. But we do drop hints, and the industry has been very cooperative in bringing these issues to the forefront at your level and then beyond. And so I'm sure that they'll come up with something, but I just mentioned it in passing as something that we really need.

SENATOR SCHROCK: Well, not everybody agrees with this, but we have not yet required a renewable portfolio and we've always thought that that's something that should be left up to the public power people and their boards. Now, keep in mind not everybody feels that way, but so far, that's been our policy and so...

KEN KUNZE: Yeah.

SENATOR SCHROCK: But, I think we all like to see some wind energy, but so far we haven't mandated it and...

KEN KUNZE: It's a real feel good thing. I mean, to see those turbines turning, you just, you can't help but feel good about it because it almost seems like it should be free, but it isn't. It's very costly, but it's a part of the package that I think that we need to offer.

SENATOR SCHROCK: All right. Other questions for Ken? Thank you for being with us.

KEN KUNZE: Okay.

SENATOR SCHROCK: We will open the hearing. You can step back.

KEN KUNZE: All right.

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LB 94

SENATOR SCHROCK: We will open the hearing. Are there people who would testify in favor of Ken Kunze's, am I saying that right, Kunze?

KEN KUNZE: Kunze, um-hum.

SENATOR SCHROCK: ...Ken Kunze' reappointment to the Power Review Board? Are there people that would speak in opposition to Ken's appointment to the Power Review Board? Is there neutral testimony? If not, Ken, this will close the hearing on your confirmation.

KEN KUNZE: Thank you.

SENATOR SCHROCK: And we will open with LB 94 and Senator Janssen is in the room to inform us on LB 94.

LB 94

SENATOR JANSSEN: Good afternoon, Senator Schrock, members of the Natural Resources Committee. For the record, my name is Ray Janssen, representing the 15th Legislative District, that is the "Pathfinder District." My pleasure to introduce to you today LB 94. LB 94 revisits the current definition of a facility that is eligible for a statutory cap on emission fees. In 1996, an emission cap fee was placed on what we call mid-sized electric generating facilities. Three facilities which are included, it includes Fremont, Grand Island, and Hastings. They were paying a disproportionate amount of emission fees per capita so the cap was put into place to bring them more in line with the per capita payments of the larger generating facilities, which also have a cap in the statutes. In 2003, the Nebraska Department of Environmental Quality notified Fremont that the NDEQ now interpreted that language of the legislation in a way that Fremont did not fall under that cap. Well, the language establishing the cap may not have been as clear as it should have been and although the intent was very clear to include Fremont under that cap. This legislation clarifies the definition of these facilities for a purpose of the cap. It makes it clear that the cities that were originally intended to be eligible for that cap are eligible for that sanction. Because the NDEQ has been charging Fremont the emission fee under the cap would not,

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LB 94

this legislation would not affect the department's revenue from emission fees. I thank you for your time, and I would try to answer any questions, but there are people following me who are more...have a clear understanding of what we're talking about. I did sponsor that and had some co-sponsors with the legislation, the prior legislation that placed these caps and helped these cities out. With that, I thank you and I would waive closing because I have another bill in Revenue across the hall. But I would try to answer any questions that you have.

SENATOR SCHROCK: Questions for Senator Janssen? Senator McDonald.

SENATOR McDONALD: Did Fremont, was that the only city that fell into this or did the other ones also?

SENATOR JANSSEN: No. The other ones were under that cap, but we thought it was taken care of for all three.

SENATOR SCHROCK: Other questions? This bill does affect the facility at Hastings and Fremont and...or just?

SENATOR JANSSEN: Well, they are the only three municipally owned generating plants...

SENATOR SCHROCK: And Grand Island?

SENATOR JANSSEN: ...in Nebraska. Grand Island, Hastings, and Fremont, yes.

SENATOR SCHROCK: All right. Other questions? Thank you for being with us.

SENATOR JANSSEN: Thank you for your time.

SENATOR SCHROCK: First proponent testimony.

DERRIL MARSHALL: (Exhibit 1) Good afternoon, Senator Schrock, members of the Resource Committee. My name is Derril Marshall, D-e-r-r-i-l Marshall, M-a-r-s-h-a-l-l. I'm the general manager of the department of utilities for the city of Fremont and am here to testify in favor of this bill, obviously. I won't go through and repeat what the senator just explained to you. But just basically that this

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bill clears up an ambiguity in the language of the statute which NDEQ recognized in 2003 and notified us that due to that ambiguity that they felt we did not fall under the terms of the cap and informed us...they charged us in 2003 our emissions fee was based upon being under the cap, but they informed us that if we wanted to go to the Legislature and get the situation cleaned up then we would remain under the cap. Otherwise, we'd have to pay emissions on all of our...pay a fee on all of our emissions which then would give us a disproportionate cost to the other utilities in the state.

SENATOR SCHROCK: Thank you, Derril. Are there questions? And as I read your testimony here, your coal-fired plant does not put you over, but when you count all the rest of the generation facilities you have there.

DERRIL MARSHALL: Well, the coal-fired plant includes three units. And we'd always been under the understanding that the cap was based on the nameplate capacity of the individual units. When we hear nameplate, to us that means one generator. And we have a 90 megawatt generator and a 16 and a 22 that are all coal-fired in the same plant. So when they use the term "facility," then, then they add those up and now we're at 130 megawatts and the cap is to apply between 75 and 115 megawatts. And so that's why the clear up of the language, then, is to say that the largest unit in the facility would be between the 75 and 115 which then clarifies it and puts us within the cap.

SENATOR SCHROCK: Your bigger unit, is it a more recent unit?

DERRIL MARSHALL: It was built in 1977, between '77 and '79 so it was there well ahead of the legislation in '96.

SENATOR SCHROCK: And your other two units, are they older units?

DERRIL MARSHALL: They are older than that. They are from the early fifties and mid sixties.

SENATOR SCHROCK: And most of them, they've been retrofitted so your emissions are fairly clean and that type of thing?

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DERRIL MARSHALL: Yes. We have a precipitator on the larger unit and we have bag houses on the smaller units.

SENATOR SCHROCK: Okay. Other questions? Senator Louden.

SENATOR LOUDEN: Yes. I guess my question would be do you run all three units at the same time or how often are all these units operating to get you over your 115 megawatts?

DERRIL MARSHALL: The...probably five to six months out of the year we would have all three units on, particularly in the summer months. Winter months, right now we're just running two of those units. It depends on the weather and what the need is for the electricity if we're running them all.

SENATOR LOUDEN: Okay, thank you.

SENATOR SCHROCK: Other questions? Thank you. Next proponent.

GARY KRUMLAND: Senator Schrock, members of the committee, my name is Gary Krumland, last name is spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities and appearing in support of LB 94. I also will try not to be repetitive, but I do want to emphasize that this bill just will maintain the status quo. There's a couple of you were here in 1996 when this issue first came out. And at the time, the three municipal electric generating facilities in Fremont, Grand Island, and Hastings were kind of caught in the middle. The larger electric generating facilities had a cap on the amount of emission fees, but the smaller ones, since they weren't emitting in the same quantity as the larger ones, did not have a cap. So the amount that they were paying per customer was quite a bit higher. So the policy at the time that was adopted by the Legislature in '96 was to give them a cap too, so it brought down closer to per customer fees as the larger ones, although they're still paying more. And it was a temporary cap in '96 that was made permanent in 2001. And it wasn't until 2003 that the Department of Environmental Quality looked at it, I guess, and decided that Fremont did not qualify. So what we're trying to do is just clarify the language so that what we thought was the policy really is the policy. And we think it tightens it and it should not

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have any effect on the amount of fees that DEQ receives under the emission fees for their program. I'd be happy to try and answer any questions.

SENATOR SCHROCK: Is there questions for Gary? So this has all just been one big misunderstanding.

GARY KRUMLAND: I guess so.

SENATOR SCHROCK: All right.

GARY KRUMLAND: And we didn't know about it for seven years, I guess.

SENATOR SCHROCK: Okay, thank you, Gary. Next proponent.

CHRIS DIBBERN: Good afternoon, Senators. My name is Chris Dibbern, and that's D-i-b-b-e-r-n. I'm governmental affairs counsel for the Nebraska Municipal Power Pool and we're here in support of LB 94. We want to thank Senator Janssen, Aguilar, and Senator Schrock for looking at this topic. We think it's a fairly simple bill that is straightforward, trying to correct a problem with interpretation. The Nebraska Municipal Power Pool does prepare the DEQ reports for some very small power plants that are not in this package. You are either large and with that 4,000 ton cap, there are three power plants in this under 400 cap, and then there are very small power plants under the general permitting requirements. And it is our recollection that Fremont should have been under this 400 ton cap. And because of the interpretation, this clarifies that if their unit is between 70 and 115 it belongs in this cap, so. Do you have any questions? I'd be happy to answer them.

SENATOR SCHROCK: Questions for Chris? Fremont has three generators, then, that use coal. I assume Grand Island and Hastings currently only have one each?

CHRIS DIBBERN: Right. They...

SENATOR SCHROCK: But Hastings is going to build and so they'll fall outside this.

CHRIS DIBBERN: And Hastings will be over that cap when they build.

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LB 94, 139

SENATOR SCHROCK: Are there other communities that have small coal-fired plants?

CHRIS DIBBERN: Not coal, they're steam, diesel, natural gas, small peaking plants. We call them distributed generation and they're very valuable.

SENATOR SCHROCK: And there's quite a few of them around the state, is there not?

CHRIS DIBBERN: Right, right.

SENATOR SCHROCK: There's even one at Holdrege. I have no idea what it turns out, but it's an, Holdrege unit.

CHRIS DIBBERN: And the DEQ measures their output and they have to report how much they run. And we do not run a lot of our MEAN power plants a great deal except certain power plants we need in the summertime.

SENATOR SCHROCK: Thank you, Chris. No further questions? Thank you for being with us. Next proponent. Is there opponent testimony? Is there neutral testimony?

JODY GITTINS: Just the letter from DEQ.

SENATOR SCHROCK: We have a letter from DEQ and I guess after looking at it I would say it's fairly neutral, but mildly...leaning on the positive side. (Exhibit 2).

JODY GITTINS: Yes, it's in support.

SENATOR SCHROCK: So with that, why, if there's no neutral testimony, Senator Janssen has waived closing. We'll move to LB 139. Committee counsel will introduce LB 139. If you wish to testify on the bills that are being heard, we'd appreciate it if you come to the front row and be prepared to go.

LB 139

JODY GITTINS: Good afternoon, Chairman Schrock, members of the committee, my name is Jody Gittins, J-o-d-y

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LB 139

G-i-t-t-i-n-s, for the record. I am committee counsel for the Natural Resources Committee and introducing this bill on behalf of Senator Schrock. LB 129 (sic) allows any public power district, corporation, or municipality that engages in the generation or transmission, or both of electric energy for sale to the public for light and power purposes to produce, store, or distribute hydrogen for use in fuel processes. The production and utilization of hydrogen is expected to become an important new source of energy for the future. Electricity production may be one of the most important processes used to produce hydrogen. Currently, what this amounts to is fuel cell technology and members of this committee were invited a few years ago to tour Henry Doorly Zoo, where fuel cell technology is being used as a part of the mix that supplies electricity to that facility. NPPD will follow me and give a greater explanation of why they feel that this bill is necessary.

SENATOR SCHROCK: Questions for the counsel? I have one. Would you explain Dillon's Rule to the committee? Am I saying that right?

JODY GITTINS: You are saying it right, but I can't explain it to the committee right now because my mind just went blank, thank you very much. (Laughter)

SENATOR SCHROCK: Well, we can discuss this later. I didn't mean to put counsel on the spot, but Dillon's Rule...

JODY GITTINS: I'm a little red.

SENATOR SCHROCK: ...is a rule that says, you can, unless, that if you're not...

JODY GITTINS: Oh.

SENATOR SCHROCK: ...prohibited from doing...

JODY GITTINS: Okay.

SENATOR SCHROCK: Are you with me now?

JODY GITTINS: Yeah. I'm with you now. Dillon's Rule states...is that if it's not specified in statute that you can do something, then you're prohibited from doing it. I

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think that's right.

SENATOR SCHROCK: And so Dillon's Rule would apply to this, so right now they can't do?

JODY GITTINS: More than likely they can't and that's why they...if it's specified in statute that they can, they can. If it's not, if it's silent, there's a question as to whether or not they would be able to.

SENATOR SCHROCK: So there's no statutes prohibiting this now...

JODY GITTINS: Not that I know of.

SENATOR SCHROCK: But the fact that it's new technology, we don't have statutes saying they can; we're not sure, but Dillon's Rule may apply, which...

JODY GITTINS: Yes.

SENATOR SCHROCK: ...prohibits them from doing it and that's why they're seeking it in legislation.

JODY GITTINS: Yes.

SENATOR SCHROCK: Is that clear? So sometimes I wonder what...

JODY GITTINS: Thank you, Senator.

SENATOR SCHROCK: Sometimes I think they wonder why they bring all this legislation, well, the statutes don't say they can do it, even though it doesn't say they can't do it. But it's a gray area that, and so.

JODY GITTINS: Dillon's Rule would say that they couldn't do it without this.

SENATOR SCHROCK: Okay. Thank you. Didn't mean to put you on the spot, but you're amongst friends here, so...

JODY GITTINS: Thank goodness.

SENATOR SCHROCK: Oh yeah. Any other questions? First

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LB 139

proponent, please. Sometimes you give a farm boy a little information and he gets to be dangerous, so.

JOE CITTA: (Exhibit 3) Good afternoon, Chairman Schrock and members of the committee. My name is Joe Citta, spelled J-o-e C-i-t-t-a. We have handed out some written testimony. I am just going to go through some talking points and will refer to my talking points here at time just to make sure I hit the high points or our testimony. I'm the corporate environmental manager for Nebraska Public Power District. I have worked for the district for over 28 years. In my career with NPPD, I've been involved in power plant operations and significantly worked in the environmental area. I'm here today to testify in support of LB 139, both on behalf of Nebraska Public Power District and the Nebraska Power Association. LB 139 promotes the development and utilization of hydrogen as a significant new potential energy source and it will help position the Nebraska utilities to be part of this emergent technology. As you know, affordable and reliable energy is a cornerstone of our economy and also our national security. Today, a lot of the primary sources of energy are coal, natural gas, hydro, nuclear, renewable, and also, oil. These sources will definitely remain a potential and future, essential energy sources in the future. However, it's expected that the hydrogen economy or the development of hydrogen technology will be also become very important in the future, and electricity will play an important part of this. Electricity generation can both help support the production of hydrogen, and also, hydrogen itself can be used to help produce the generation of electricity, as in the fuel cell technology referenced earlier. One of the great attributes of hydrogen is its ability, when it's consumed as a fuel, to be nonpolluting and also produce no CO<sub>2</sub>, which there are concerns, you know, in the nation concerning CO<sub>2</sub>. The opportunities associated with increasing hydrogen production will bring both environmental benefits and also can help us enhance our energy independence by utilizing this fuel. There's growing interest in the world in promoting hydrogen economy and the development of the hydrogen technology. In fact, the federal government is now increasing its investment research into the development of hydrogen. Like all emerging technologies, improvements will need to lead what will lead to greater commercial successes. Some of the challenges going forward will include lowering the costs in

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LB 139

order to produce, store, and distribute trihydrogen, and help further the technologies that would bring it as a useful fuel and productive cost competitive fuel. We feel LB 139 helps position the Nebraska electric industry to be part of this emerging technology, and will help bring its potential benefits to the citizens of Nebraska. With that, I would be glad to answer any questions you may have.

SENATOR SCHROCK: Thank you, Joe.

JOE CITTA: Certainly.

SENATOR SCHROCK: I've never seen that last name before. Questions for Joe? Senator Louden.

SENATOR LOUDEN: Yeah, I looked this bill over some and of course, when you start talking about using hydrogen technology and stuff, is there going to have to be some kind of legislation or somebody have to be appointed to oversee the safety measure of using this hydrogen and that sort of stuff? I mean...

JOE CITTA: Well, safety will be a major concern of hydrogen due to its flammability. I don't know if anybody will need to be appointed on that. I mean, that will be on the research that I've been involved in, I mean, safety, whether it be in the production, transportation, or distribution, that is a major issue. And I'm sure it would also become a major issue in homeland security issues. But I'm not sure I've answered your question, but safety is a component that will need to be addressed in the developing technology.

SENATOR LOUDEN: And I'm wondering if that has to be along with this legislation or something, something has to be in there whether the DEQ is designated to oversee the safety measures or something like that, I guess. Anybody that's blew the top off a wet cell battery knows that you got to have some guideline some place in that. That was my concern, whether you think there should be some more legislation with this or some companion legislation for safety measures.

JOE CITTA: I'd have to...yeah, I could go back and talk to our governmental affairs folks, but you know, safety is part of the components of just handling. And also, as part of

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LB 139

the research involved, there's quite a bit of research involved in how you can safely transport. You know, DOT would be involved into the transportation thing. I know Department of Energy has pieces and parts of that. I guess one of my challenges would be is if there was to be legislation, I don't know that I could recommend...I could recommend which department would have the, you know, the governance over that type of thing. But you know, due diligence in handling the technology would be, you would need to address the safety issue.

SENATOR LOUDEN: Thank you.

JOE CITTA: Okay.

SENATOR SCHROCK: Other questions for Joe? I don't know that DEQ deals with safety issues. They deal with the emission issues and environmental issues and I don't know who would have oversight over that, Senator Louden. Would that be OSHA or was there a...

JOE CITTA: Yeah.

SENATOR SCHROCK: ...federal agency that has jurisdiction over your safety issues?

JOE CITTA: Well, it would be, naturally, yeah, at a facility OSHA would certainly have safety issues. During the transportation like I mentioned, there would be DOT would have to be involved into the types of containers. I mean, so it would be several agencies involved into whatever aspect there are. And I believe there would be...there's existing rules and regulations that would probably address it because right now we work with many flammables, whether it would be...you know, hydrogen right now is transported between facilities and things like that in compressed gas containers...

SENATOR SCHROCK: There's no...

JOE CITTA: So, I think there's existing pieces of that already out.

SENATOR SCHROCK: There's no emissions issue with hydrogen cell, is there?

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JOE CITTA: No.

SENATOR SCHROCK: All right.

JOE CITTA: Not that I'm aware of.

SENATOR SCHROCK: All right. Other questions for Joe?  
Thank you for being with us.

JOE CITTA: Thank you, Senator.

SENATOR SCHROCK: Next proponent? Opponent testimony?  
Neutral testimony? I will waive closing. That will  
complete the hearing on LB 139. And we will go to LB 298.  
Senator Landis isn't here.

LB 298

JODY GITTINS: They went to get him.

SENATOR SCHROCK: Okay.

JODY GITTINS: He's introducing a bill in Government.

SENATOR SCHROCK: And if he's tied up, we can skip to  
LB 335?

JODY GITTINS: I don't care.

SENATOR SCHROCK: And...

JODY GITTINS: Carl went to get him, so...

SENATOR SCHROCK: All right.

JODY GITTINS: But this one wouldn't take long. Up to you.

SENATOR SCHROCK: Let's give it a minute and see where  
Senator Landis...as they would say in the military, stand at  
ease, but smoke them if you got them doesn't work anymore.

BARB KOEHLMOOS: There he is.

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SENATOR SCHROCK: There is the honorable, Senator Landis.

SENATOR KREMER: From the garden district.

SENATOR SCHROCK: Welcome.

SENATOR LANDIS: Thank you, Senator Schrock, members of the...

SENATOR SCHROCK: And Senator, you...

BARB KOEHLMOOS: I'll fill one out for you, Senator.

SENATOR LANDIS: Thank you.

SENATOR SCHROCK: You are authorized to open on LB 298.

SENATOR LANDIS: I am. I spoke to the principal introducer and he said it would be okay. Senator Schrock, members of the Natural Resources Committee, David Landis, principal introducer of LB 298, representing the garden district today. This is here in sort of a whoops capacity, because we did a rewrite of the Motor Vehicle Fuels Act last year, LB 983. It was brought to us by the Revenue Department. They'd done a lot of work on their act and one of the things that happened among a relatively large bill was the merger of some previously separate statutes with respect to the taxation of gasoline and diesel fuel into a single motor fuels tax. When we did that, however, our definition for the tax of motor vehicles meant gasoline and diesel. The reference in the LUST Fund statutes for leaky underground storage tanks and petroleum spills and the like was pegged to that statute's definition. The old statute had included motor oil, crude oil, waste petroleum, and other petroleum products, but when we changed the Revenue Department Act to motor vehicle fuels, we narrowed the definition to, essentially, gas and diesel, which meant that the LUST Fund had it, at the same time, inadvertently, had its parameters limited to gasoline and diesel. Well, you can have a motor oil leak; you can have a crude oil leak, all of which should be, and historically have always been available, for a LUST Fund cleanup appropriation. But this change that we did in LB 983 had the inadvertent follow through impact of narrowing the effect of the LUST Fund statute. None of the parties who are concerned about the use of the Petroleum

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Release Remedial Act caught it, the Department of Revenue didn't catch it, we didn't catch it in the committee. It was only until, at some point, they got to comparing, you know, the statutes that they realized that the Petroleum Remedial Act's definition got changed in LB 983. Everybody wants it back the way it was. There won't be any opposition to this bill from the lobby because, in fact, they'd like to have access to the Remedial Fund along the lines that it's always had, rather than the definition change from last year. And that's the purpose of LB 298.

SENATOR SCHROCK: Thank you, Senator Landis. Questions? Were you surprised that it got referenced here rather than Revenue?

SENATOR LANDIS: I think what they did is I think they picked the graybeards of the Legislature, the wise. That's an old expression for the wise, the graybeards, and I think they probably said, this is going to require an accumulation of wisdom, which is why they sent it here. If they'd needed an accumulation of skinflints, they would have sent it to us. But for wisdom, they probably sent it here. That's my theory. That's my only explanation for it.

SENATOR SCHROCK: I could maybe disagree with that, but...

JODY GITTINS: (inaudible) waive closing.

SENATOR SCHROCK: Senator Louden.

SENATOR LANDIS: But you're not nearly as skinflint enough to be on our committee, mister.

SENATOR SCHROCK: Yeah. I understand. I'm always coming to your committee for tax breaks. Senator Louden.

SENATOR LOUDEN: My observation is the reason we got this, Senator Landis, is that all committees should have the ability or should be able to have Dave Landis bring a bill up before you in every session and this is our privilege for...

SENATOR LANDIS: This is your chance... (Laughter)

SENATOR LOUDEN: ...this time, so...

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SENATOR LANDIS: That's right.

SENATOR LOUDEN: And I want to thank you.

SENATOR LANDIS: Well, you're welcome, LeRoy.

SENATOR SCHROCK: Other questions? Well, that wasn't a question, that was a comment, so. And that's okay.

SENATOR LANDIS: And I accept it.

JODY GITTINS: Waive closing?

SENATOR SCHROCK: Okay, Dave, are you going to stick around for closing?

SENATOR LANDIS: Do you think it's going to need closing? I don't think so. I'm thinking I'll go back and...

SENATOR SCHROCK: Okay.

SENATOR LANDIS: I got some tax incentives over there and tax, you know...

SENATOR SCHROCK: All right.

SENATOR LANDIS: ...exemptions that we got to go talk about.

SENATOR SCHROCK: All right.

SENATOR LANDIS: They need my skinflintedness...

SENATOR SCHROCK: All right.

SENATOR LANDIS: ...over there.

SENATOR SCHROCK: All right. Is there people that would testify in a proponent capacity?

TIMOTHY P. KEIGHER: Good afternoon, Chairman Schrock and members of the committee, my name is Tim Keigher; that's T-i-m K-e-i-g-h-e-r. I'm the executive director of the Nebraska Petroleum Marketers & Convenience Store Association and I'm here before you today on behalf of the members in

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LB 298, 335

support of LB 298. First of all, we would like to thank Senator Landis for bringing this bill before you. Senator Landis has done a great job of outlining what happened, the oops, I guess, as he referred to it. I guess I just want to briefly explain what the role of this has. The federal EPA passed underground storage tank regulations back in 1988, 1989. They required owners of petroleum tanks over 110 gallons or greater to have financial responsibility. Long story short, insurance companies weren't willing to write this coverage, so many states formed state underground or leaking underground storage tank funds, referred to as LUST Funds like the state of Nebraska has. Through their definition change, since DEQ referred to that definition, basically, waste oil tanks and virgin motor oil tanks have been removed from eligibility from the Fund as of January 1. That was never the intention of the legislation was to remove them; it was simply the definition change that DEQ referred to that caused that. So I guess I'll leave it with that and if anybody has any questions, I'll try and answer them.

SENATOR SCHROCK: Thank you, Tim. Questions? I guess there are none, Tim. Thank you for being with us.

TIMOTHY P. KEIGHER: Thank you.

SENATOR SCHROCK: Other proponents to LB 298? Is there opponent testimony? Is there neutral testimony? If there's not, that will close the hearing on LB 298. And we will go to LB 335 and counsel will introduce that bill. And we're not playing stump the counsel this day, so.

LB 335

JODY GITTINS: Good afternoon, Chairman Schrock, members of the committee, my name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm committee counsel for the Natural Resource Committee and introducing this bill on behalf of Senator Schrock. The purpose of LB 335 is to clarify that the Industrial Groundwater Regulatory Act does not apply to any public water supplier providing or intending to provide groundwater for industrial purposes, nor does the act apply to any person who is using, or intends to use, groundwater for industrial purposes that is supplied by a public water

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LB 335

supplier. This actually codifies what's being done and what has been done traditionally by DNR in relationship to these types of industrial uses. So there was an ambiguity in the statute as to whether or not municipal wells came under this category of municipal...industrial users that were using municipal water came under this category. This clarifies it and codifies the department's position, as well as the League's position and this was brought to Senator Schrock by the League of Municipalities.

SENATOR SCHROCK: Are there questions for counsel on LB 335? Okay. We will take proponent testimony on LB 335.

MARY SOMMERMEYER: My name is Mary Sommermeyer and that's M-a-r-y S-o-m-m-e-r-m-e-y-e-r and I am here on behalf of the League of Nebraska Municipalities. We would like to thank Senator Schrock for introducing this bill on behalf. As Jody said, it's attempting to simply put in place in law what the interpretation has been over the years. The Industrial Groundwater Regulatory Act was passed in 1981, and in the time since then, it's been interpreted to apply to industries that need to take water from nonadjacent land, transport it to other land. I have been informed that there's only 10 permits that have been issued over the years and most of those are from meatpacking plants. Recently, it was suggested that if you actually look at the language and read it, it could be interpreted as applying to industries that get water from public water suppliers: municipalities and others. If this interpretation were actually carried out, there would be a fair amount of paperwork just for the existing industries that are in place. If you think of all the existing industries that are in municipalities or that get their water from public water suppliers, there would be a fair amount of paperwork and time to process all those applications. And when this was brought to our attention, we thought it would be good to get the law clarified, that it isn't intended to apply to public water supplied industries. Most of the water that the industries use are for health and sanitation and they return about 90 percent of the water that they use. There is currently one other exemption in the statutes for those industries that use 150 acre feet or less, and so this bill simply adds another exemption for those that are supplied by public water suppliers.

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SENATOR SCHROCK: Thank you, Mary. Are there questions? I see none.

MARY SOMMERMEYER: Thank you.

SENATOR SCHROCK: I guess I would ask you...

MARY SOMMERMEYER: Oh.

SENATOR SCHROCK: This has not been a problem up to the date, but somebody says, if we don't do something, it could be a problem, is that what I'm hearing?

MARY SOMMERMEYER: Um-hum. Yeah.

SENATOR SCHROCK: And...

MARY SOMMERMEYER: So far...

SENATOR SCHROCK: And...

MARY SOMMERMEYER: ...nobody has attempted to require a permit, so...

SENATOR SCHROCK: And is there an individual that brought this to our attention?

MARY SOMMERMEYER: Actually, Don Blankenau, a water law attorney that we'd been working with told us...

SENATOR SCHROCK: Okay.

MARY SOMMERMEYER: ...that in discussions with the Department of Natural Resources that was an interpretation that they saw as a possibility for the statutes.

SENATOR SCHROCK: Okay. All right. Thank you for being with us.

MARY SOMMERMEYER: Thank you.

SENATOR SCHROCK: Next proponent.

JAMES P. DIETZ: Good afternoon, Senators, my name is James Dietz. That's J-a-m-e-s D-i-e-t-z. I'm the general manager

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LB 335

of the Board of Public Works in Auburn, Nebraska. We are the municipal utility there for electric, water, and wastewater, and we have three excellent manufacturers in Auburn who have been there for well over 40 years. They have over 600 employees between the three of them and this LB 335 looks like it could affect a lot of cities in Nebraska, and so we are asking that you would exempt our industries from having to apply for these water transfer permits. Thank you. Could I answer any questions?

SENATOR SCHROCK: Thank you, James. Questions? I guess there are none.

JAMES P. DIETZ: Thank you very much.

SENATOR SCHROCK: Appreciate you being with us. Next person who would testify as a proponent? Is there opponent testimony? Is there neutral testimony? Is there any written testimony from DNR or?

SENATOR SCHROCK: Okay. That will close the hearing on LB 335.